

REGIONAL OPERATIONS CENTER INVESTIGATING COMMITTEE

DATE: March 10, 2014

CALLED TO ORDER: 5:33 p.m.

ADJOURNED: 6:07 p.m.

ATTENDANCE

Attending Members

Joseph Simpson, Chair
Aaron Freeman
Monroe Gray
Pamela Hickman
Angela Mansfield
Frank Mascari
Janice McHenry
William Oliver
Marilyn Pfisterer
Jack Sandlin

Absent Members

AGENDA

Document Status Update
Subpoena

REGIONAL OPERATIONS CENTER INVESTIGATING COMMITTEE

The Regional Operations Center Investigating Committee of the City-County Council met on Monday, March 10, 2014. Chair Joseph Simpson called the meeting to order at 5:33 p.m. with the following members present: Aaron Freeman, Monroe Gray, Pamela Hickman, Angela Mansfield, Frank Mascari, Janice McHenry, Marilyn Pfisterer, William Oliver and Jack Sandlin. Representing Council staff were General Counsel Fred Biesecker and Fiscal and Policy Analyst, Ryan Kramer.

Chair Simpson stated that the sole purpose of the meeting is to provide a status update on document production requests and to make a motion granting the authority to issue document subpoenas. He stated that since November 15, 2013, numerous requests have been made to the Office of Corporation Counsel(OCC), but the committee has yet to receive several significant documents related to its core mission. At the January 8, 2014 meeting, Corporation Counsel Andy Seiwert, stated it would take an additional 30 days to produce the documents; however, it has now been 60 days. Chair Simpson added that it is his expectation that a subpoena will produce a number of high priority documents we have requested.

Councillor Sandlin moved, seconded by Councillor McHenry, to amend the agenda to allow public testimony. The motion failed by a vote of 4-6, with Councillors Gray, Hickman, Mansfield, Mascari, Oliver and Simpson casting the negative votes.

Chair Simpson then asked Mr. Biesecker to discuss the motion and document. Mr. Biesecker stated that Alex Carroll produced around 20 documents to him on March 6th. He briefly discussed the packets given to the committee. The first packet is Mr. Carroll's written response to the document request (attached as Exhibit A). The second packet includes a list of the documents produced by Mr. Carroll (attached as Exhibit B). Mr. Biesecker stated that Mr. Carroll only produced the documents that he alone has and most of the items should be in the possession of OCC and the City. Mr. Biesecker added that if the City does not produce the needed documents, then he will need to return to Mr. Carroll to retrieve them. The third packet is a log showing the 42 specific items requested on February 20th and the City's response to date (attached as Exhibit C). Mr. Biesecker stated that the City has produced a few more documents; however, the City's overall response has been inadequate. He stated that he sent an email to Mr. Seiwert on March 5th asking if the City intended to produce more documents before the ROC meeting; however, he did not receive a response. The fourth packet consists of a motion and revised document subpoena (attached as Exhibit D). The number of items in the subpoena has been reduced from 42 down to 30 items because the City produced some of the items. He stated that the subpoena is only for Mr. Seiwert, as Mr. Carroll has recently produced his documents. He added that the proposed subpoena removes the items that the City has produced, as well as removes the items that the City says it does not have.

Councillor Hickman moved, seconded by Councillor Mascari, authorize Chairman Simpson to issue the document subpoena to Andrew P. Seiwert, Corporation Counsel, acting on behalf of all city agencies.

Councillor Freeman asked Mr. Biesecker whether he thinks it is reasonable for Councillor Freeman to become frustrated after not receiving a response to an email sent to Mr. Biesecker on February 13, 2014 asking for a record of every formal request that Mr. Biesecker has made for the information; what documents are being requested; and how the documents would further the committee's investigation. Mr. Biesecker¹ stated that Councillor Freeman's question is considerably different from the current issue, as the original document requests were sent out on November 15, 2013; and the committee has had lengthy discussions during the ROC committee meetings regarding document logs, detailing which documents have or have not been produced. Councillor Freeman asked Mr. Biesecker to explain the meaning of "legislative body" as stated in the Indiana Code §36-3-4-24 (included in Exhibit D). He asked if it considers the legislative body to be the ROC committee or the full Council. Mr. Biesecker stated that Councillor Freeman is referring to IC 36-3-4-24(d), which states "If a person refuses to testify or produce evidence at an investigation conducted under this section, the legislative body may order its clerk to immediately present to the circuit court of the county a written report of the facts relating to the refusal. The court shall hear all questions relating to the refusal to testify or produce evidence and shall also hear any new evidence not included in the clerk's report. If the court finds that the testimony or evidence sought should be given or produced, it shall order the person to testify or produce evidence, or both"; however, the committee is proceeding under IC 36-3-4-24(c), which states "When conducting an investigation under this section, the legislative body or its committee: (1) is entitled to access to all records pertaining to the investigation; and (2) may compel the attendance of witnesses and the production of evidence by subpoena and attachment served and executed in the county." He added that IC 36-3-4-24(d) would come into play if someone refused to testify or produce evidence in response to a subpoena. If the City refused to testify or produce the documents requested in the subpoena, the issue would then go before the full Council; however, at this stage it is in the hands of the committee. Councillor Freeman stated that there are people are willing to speak to the committee regarding the requested documents, but they have not been given the opportunity, as public testimony has not been allowed at the meetings. He added that he is not pleased with the process and the direction the committee has gone.

Councillor McHenry asked if the document log is up-to-date. Mr. Biesecker affirmed. Councillor McHenry asked if the requested items are public record. Mr. Biesecker affirmed. Councillor McHenry stated asked why Mr. Biesecker has not gotten the missing items since they are public records. Mr. Biesecker stated there are two independent bases under which the committee can retrieve the requested documents: (1) the public records act and (2) the committees authority under IC 36-3-4-24. He stated that he has made a request for the public records, but has not received all of them.

Councillor Pfisterer asked if the updated documents been emailed to the committee prior to the start of the current meeting. Mr. Biesecker stated that he is not certain. Councillor Pfisterer stated that the committee has a lot of information to review and needs time to go through all of it.

Councillor Sandlin stated that he has previously made document requests and asked Mr. Biesecker to explain what was mentioned in his document request. Mr. Biesecker stated that asked for priority on the 42 items that were listed on the request. Councillor Sandlin asked why it

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is not posted on the ROC website. Mr. Biesecker stated that he was unaware that it was not on the site.

Councillor Mascari stated that although he is new to the committee, he knows that there is a big issue and hopes the committee can come to agreement to resolve it.

Councillor Gray stated that the reason the committee is at this point is because the requested documents have not been produced. He added that in order to conduct the investigation effectively, the proper documents are needed to move forward.

Councillor Sandlin stated that he agrees that the documents are needed to properly conduct the investigation; however, there are individuals who would like to speak, but have not been afforded the opportunity, as the meetings have been closed to public testimony. He believes the public testimony would provide some insight to the committee.

Councillor Mansfield stated that the committee is following a set process. She stated that another member was added to the committee, because they need to move forward with the investigation, but have not been able to due to documents not being produced and the disagreements within the committee.

The motion carried by a vote of 6-4, with Councillors Freeman, McHenry, Pfisterer and Sandlin casting the negative votes.

Councillors Pfisterer stated that she cannot vote in favor of the subpoena without hearing public testimony from the individuals involved in the investigation.

Councillor McHenry stated allowing the committee to hear public testimony that will explain the current issues will help her have a better understanding, as opposed to reading a document.

Councillor Sandlin stated that he has a problem with issuing a subpoena when there are outstanding public record requests. He stated that there is a process under the law to be followed to get access to the records to ask the party that is noncompliant to give an explanation to an independent party to decide whether they are noncompliant. He added that the committee is rushing to issue a subpoena instead of following the investigative process.

Councillor Gray stated that public testimony will be needed at some point in the process; however, until the committee receives the requested documents, the committee will not have the proper questions to ask those interested in giving public testimony.

Councillor Oliver stated that the investigation is embarrassing that the City is unable to respond to the issues in question at the ROC.

Councillor Hickman stated that she supported the subpoena because she thinks the committee should be upset that they have not received the requested documents. She stated that the documents are needed prior to public testimony in order to have adequate knowledge and the ability to ask appropriate questions.

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Chair Simpson stated that the meeting is set up for the taxpayers. The job of the committee is to keep the taxpayers informed, as the matter involves their money.

With no further business pending, and upon motion duly made, the Regional Operations Center Investigating Committee of the City-County Council was adjourned at 6:07 p.m.

Respectfully submitted,

Joseph Simpson, Chair
ROC Investigating Committee

JS/slp

ALEX CARROLL'S RESPONSE TO
DOCUMENT PRODUCTION REQUEST,
FEBRUARY 20, 2014.

DOCUMENTS REQUESTED AS OF FEBRUARY 20, 2014

1. Building permits issued by DCE for the ROC project, including those identified as STR11-02900, HTG11-07439, PLM 11-01904, and ELE11-03589, and all amendments and supplements thereto.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records

2. All amendments and supplements to the set of plans submitted to DCE on July 29, 2011.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records.

3. The set of plans dated October 27, 2011, which was provided to DLZ and discussed in the DLZ report.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients did not provide any documents to DLZ.

4. Violations issued by IFD on October 12, 2012.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records

5. The list of seven requirements for continued occupation of the leased premises provided by DCE to Alex Carroll in October 2012.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records.

6. Testing, inspection and maintenance records of the sprinkler and fire alarm systems (per NFPA 25 and 72).

RESPONSE: The sprinkler system is annually tagged by the City's contractor, Koorsen. The fire alarm is monitored by the City's contractor, Sonitrol. My clients may have a photo of the original tag from the move-in at or around the time of the Super Bowl. Assuming we can find it, we will produce it.

7. The following documents, which are identified as "Operative Agreements" in the Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement, dated as of June 23, 2011, and recorded as instrument number A201100056539:

- The Note Purchase Agreement, dated as of June 23, 2011, and the amortization schedule attached thereto
- The Indemnity and Guaranty Agreement
- The Escrow and Servicing Agreement

- The Construction Escrow Agreement
- The Assignment of Contracts
- The Construction Completion Guaranty
- The Hazardous Material Indemnity Agreement
- The 5.01% Senior Secured Note, due December 15, 2037; and
- The SNDA Agreement

RESPONSE: Each of the requested documents constitutes a private financial record of my clients. As you know, the City is not a party to any of the documents referenced (with the exception of the SNDA) and there are no documents to which my clients are a party that require my clients to borrow any particular amount of money or spend any particular amount of money on Tenant Improvements. Nevertheless, we will produce these documents for inspection.

8. Fire and life safety drawing or code summary sheet, per 675 IAC 12-6-7(g)(4).

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records.

9. IFD inspection reports and checklists.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of documents responsive to this Request.

10. Inspection reports by Bruce Baun, Robert Zickler, or any other project manager/contract manager/consultant retained by DPS.

RESPONSE: As you know, Mr. Braun was hired by and reported to the City. It is our understanding that Mr. Zickler was employed by the City at that time. Each document requested is a public record. Furthermore, my clients are not in possession of documents responsive to this Request.

11. The contract or contracts with Hoffman Engineers, P.C.

RESPONSE: There is no contract between any of my clients and Mr. Hoffman relating to this project. Therefore, my clients are not in possession of documents responsive to this Request.

12. Any certificates of completion and/or code compliance submitted to any federal or state agency.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records.

13. All other credit tenant leases entered into by DPS since January 2010.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients do not have any other lease arrangement with the City for any other property. Furthermore, my clients are unaware of any other credit tenant leases. Therefore, my clients are not in possession of documents responsive to this Request.

14. Communications between DPS and Channel 16 relating to the direction given by DPS in 2010 not to record Board of Public Safety meetings on video, and the reinstatement of video in 2012.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of any documents responsive to this Request.

15. Detailed project budgets for the project as presented to the Council committee on April 26, 2011, with total estimated project costs of \$8,643,000, and any subsequent amendments or supplements thereto.

RESPONSE: The referenced budget was prepared and presented by Frank Straub. My clients did not participate in the preparation of that presentation and have no knowledge as to what supporting documentation may or may not have been used. Nevertheless, as indicated below in our response to Request 22, we will produce the exhibits to the Development Agreement. Exhibit F is a preliminary budget attached to the Development Agreement (which was effectively nullified by the Administration and Finance Committee on April 26, 2011 and the Council on May 16, 2011 and is formally null and void as of the Settlement Agreement). Whether Exhibit F to the Development Agreement was used in whole or in part by Frank Straub is not known to my clients. A subsequent budget was developed after the Straub presentation and is attached to the Construction Escrow Agreement (which will be produced for inspection pursuant to the response to Request 7).

16. The DPS proposal prepared before Frank Straub's arrival to house the emergency operations center at the old Indianapolis airport.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of any such documents (to the extent they exist). Therefore, my clients are not in possession of documents responsive to this Request.

17. Documents relating to the "preferential square footage rate" for moving the IMPD East District to School # 78, as discussed at the May 16, 2011 Council meeting.

RESPONSE: My clients do not understand what documents you are requesting. My clients are only familiar with the rates provided to the City pursuant to the Lease (and earlier drafts of the Lease relating to the larger project rejected by the Council). Therefore, other than the Lease, my clients do not believe they are in possession of documents responsive to

this Request. Pursuant to the response to Request 24, my clients will produce all lease drafts in their possession.

18. The memorandum circulated by Ryan Vaughn at the May 16, 2011 Council meeting.

RESPONSE: We are not familiar with the memorandum you are requesting. As we understand your Request, my clients are not in possession of documents responsive to this Request.

19. The contract between 401-Public Safety, LLC and DPS, for the amount of \$25,064,380.80, as listed on the agenda of the April 21, 2011 Board of Public Safety meeting.

RESPONSE: My clients do not know what "contract" you are requesting. The only contracts executed between the City and my clients are the Development Agreement (since nullified), the Lease and the Settlement Agreement. As you know, the date of your referenced meeting preceded the April 26, 2011 Administration and Finance Committee meeting in which the then-envisioned project was nullified. Thus, any references to rent or other amounts at the time of your referenced date would be for a 210,000 square foot project (which, of course, never happened). No contracts were ever executed for the amounts you reference. As indicated below in Request 24, we are willing to produce lease drafts that preceded the Lease that are in our possession. No lease was executed until the current Lease. Therefore, my clients are not in possession of documents responsive to this Request (as we understand it).

20. The contract with the NFL that required the city to have an emergency operations center in time for the 2012 Super Bowl.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, we are not in possession of any documents responsive to this request.

21. The maintenance agreement referred to in paragraph 20 of the December 2013 settlement agreement.

RESPONSE: As I believe the City has informed you, this document does not yet exist. We cannot produce a document that does not exist. We will provide a copy when it is finalized.

22. Exhibits A, C, D, E and F to the Development Agreement.

RESPONSE: My clients will provide you with these documents.

23. Drafts of the Development Agreement, and related correspondence.

RESPONSE: We are not in possession of any drafts. You already have the Development Agreement (with the exception of Exhibits which my clients will provide) that was executed. Therefore, my clients are not in possession of documents responsive to this Request.

24. Drafts of the Lease, and related correspondence.

RESPONSE: My clients did not draft or negotiate the terms of the Lease or any drafts preceding the Lease (with the exception of the economic terms). We will produce any drafts in our possession.

25. Documents sufficient to show how much money was actually spent on the ROC build-out.

RESPONSE: My clients are willing to produce a spreadsheet showing each payment for ROC hard cost build-out. Such printout will show the date, the category of expense, and the amount of each such expense, along with a total of hard cost expenditures.

26. Complete DCE files for all Notices of Violation and Stop Work Orders.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. As a side note, you may want to seek the original inspector notes. Such documents will reveal that the project was being inspected by the City throughout construction.

27. Links to two SharePoint sites established by or for Valerie Washington (these links were provided by DPS to OCC but neither has produced them).

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of any documents responsive to this Request.

28. Communications between Gary Coons and the NFL relating to the emergency operations center (these documents were provided by DPS to OCC but neither has produced them).

RESPONSE: It is not clear to my clients what documents you are referencing. They may or may not be public records. Furthermore, you indicate that the City has these documents. Nevertheless, my clients do not believe they are not in possession of documents responsive to this Request.

29. Eastgate project status report issued by Robert Zickler (this was provided by DPS to OCC but neither has produced it).

RESPONSE: My clients are not familiar with the documents requested. They may or may not be public records. Nevertheless, without further specificity, my clients do not believe they are in possession of documents responsive to this Request.

30. Copy of punch list provided by Alex Carroll (this was provided by DPS to OCC but neither has produced it).

RESPONSE: My clients are not familiar with what documents were produced by DPS to OCC. In any event, the document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, you indicate that the City has the documents responsive to this Request. As a side note, although my

client requested a walk-through via email in August of 2012, my clients' current recollection is that they did not receive any "punchlist" from the City until December of 2012 without the benefit of inviting my clients to participate in a joint walk-through.

31. E-mails to or from Frank Straub, or on which Straub was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records.

32. E-mails to or from Jonathan Mayes, or on which Mayes was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.

RESPONSE: Each document requested is a public record (if not protected by the attorney-client privilege). As you are aware, even in a litigation setting, we would not have to produce public records.

33. E-mails to or from Tom Michalak, or on which Michalak was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.

RESPONSE: Each document requested is a public record (if not protected by the attorney-client privilege). As you are aware, even in a litigation setting, we would not have to produce public records.

34. Documents explaining and showing the detailed components of the \$3,627,400 in construction "hard costs" and \$3,300,000 in "land costs" identified in the materials provided to the Council committee on April 26, 2011.

RESPONSE: As referenced in our response to Request 15, my clients did not participate in the preparation of the presentation by Frank Straub at the Council Committee meeting referenced. Therefore, my clients cannot identify the documents requested in this Request. Pursuant to our responses to the Requests 7 and 22, you will have the preliminary budget attached to the Development Agreement and the budget attached to the Construction Escrow Agreement, plus the amount of money placed into the Construction Escrow account. My clients do not have any other budgets at or around the time of Mr. Straub's presentation. Even then, one is for a project that never happened and the others are budgets developed subsequent to Mr. Straub's presentation. Notably, the "budget" presented by Mr. Straub (attached to the minutes of the April 26, 2011 meeting) was clearly identified as "Preliminary Draft, For Review And Discussion" and "Subject To Change."

35. Documents sufficient to show the disbursement and use of the \$9,616,000 proceeds of the June 23, 2011 loan to 401-Public Safety, LLC.

RESPONSE: This Request is cumulatively duplicative of Requests 7 and 25. See our responses to those Requests.

36. Communications between the City and Carroll and/or Carroll's affiliated entities, for the period from March 18, 2011 through June 23, 2011.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records

37. Documents evidencing or relating to how DPS proposed to pay for the lease.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of documents responsive to this Request.

38. Documents sufficient to show how much money the City has actually spent so far in connection with the ROC, including but not limited to lease payments, utility and maintenance payments, costs of improvements and repairs, machinery and equipment, furniture and fixtures, contracts (consultants, project managers, outside counsel, financial advisers, etc.), moving costs, fire watch costs, and other goods and services.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records

39. Any independent appraisals of the leased premises.

RESPONSE: My clients may have an appraisal performed for the lender. My clients will search for that appraisal. If it is found, my clients will produce it.

40. Documents comparing the cost of the leased premises with the cost of other alternative locations considered by DPS for the emergency operations center or the location of the IMPD East District.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of documents responsive to this Request.

41. Audit reports, internal or external, relating to the City's expenditures on the ROC.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of any documents responsive to this Request.

42. Notices published by the Board of Public Safety in connection with the ROC Lease, as required by IC 36-1-10-13.

RESPONSE: Each document requested is a public record. As you are aware, even in a litigation setting, we would not have to produce public records. Furthermore, my clients are not in possession of any documents responsive to this Request.

Exhibit A

**Production of Documents Pursuant to Request No. 6
(February 20, 2014)**

1. Sprinkler Inspection 1/27/2012

Exhibit B

Production of Documents Pursuant to Request No. 7 (February 20, 2014)

1. Mortgage, Security Agreement, Assignment Of Leases And Rents And Fixture Filing Statement Dated As Of June 23, 2011
2. 5.01% Senior Secured Note, Due December 15, 2037 Dated As Of June 23, 2011
3. Indemnity And Guarantee Agreement Dated As Of June 23, 2011
4. Escrow And Servicing Agreement Dated As Of June 23, 2011
5. Collateral Assignment Of Contracts And Plans And Other Agreements Affecting Real Estate Dated As Of June 20, 2011
6. Completion Guarantee And Agreement Dated As Of June 23, 2011

7. Construction Escrow Agreement Dated As
Of June 23, 2011
8. Hazardous Material Indemnity Agreement
Dated As of June 23, 2011
9. Subordination, Non-Disturbance And
Attornment Agreement Dated As of June 23,
2011
10. Title Company Escrow Closing Instructions
Dated June 22, 2011
11. Note Purchase Agreement Dated June 23,
2011

Exhibit C

Production of Documents Pursuant to Request No. 22 (February 20, 2014)

1. Exhibit C To The Development Agreement
2. Exhibit D To The Development Agreement
3. Exhibit E To The Development Agreement
4. Exhibit F To The Development Agreement

Exhibit D

Production of Documents Pursuant to Request No. 24 (February 20, 2014)

1. Lease Agreement Redline of March 15, 2011 Draft.
2. Lease Agreement Draft of March 17, 2011

Exhibit E

Production of Documents Pursuant to Request No. 25 (February 20, 2014)

1. Hard Cost For Tenant Improvements
Transaction List.
2. Development Agreement Budget
3. Straub Budget
4. Budget In Appraisal
5. Budget In Construction Escrow Agreement

Exhibit F

Production of Documents Pursuant to Request No. 35
(February 20, 2014)

1. May 6, 2011 Appraisal Of Real Property

SCHEDULE A

DEFINITIONS

"Document" includes electronically stored information and has the meaning set forth in Indiana Trial Rule 34(A)(1).

"ROC" means the Regional Operations Center located on the site of the former Eastgate Consumer Mall on North Shadeland Avenue

"DPS" means the City of Indianapolis Department of Public Safety.

"IMPD" means the Indianapolis Metropolitan Police Department

"IFD" means the Indianapolis Fire Department

"Development Agreement" means the Agreement between DPS, 401-Public Safety, LLC and Lifeline Construction Services, LLC, signed on March 18, 2011.

"Lease" means the Lease Agreement between DPS and 401-Public Safety, LLC dated as of May 20, 2011.

"Council" means the Indianapolis/Marion County City-County Council.

"DCE" means the Department of Code Enforcement

"OCC" means the Office of Corporation Counsel

"City" means the Consolidated City of Indianapolis and Marion County

"DLZ" means DLZ Indiana, LLC

"Carroll" means Alex Carroll and his representatives, designees and agents.

"Carroll's affiliated entities" include 401-Public Safety, LLC, Lifeline Construction Services, LLC, Lifeline Data Centers, LLC, Live Wire Technologies, LLC, Lifeline Land Ventures, LLC, Lifeline Communications, LLC, Lifeline Communications, Inc., and any other entities in which Carroll directly or indirectly holds a substantial ownership or management interest.

Unless otherwise indicated, the time period covered by the subpoena is January 1, 2010, to the present.

DOCUMENTS REQUESTED and CITY'S RESPONSE

1. Building permits issued by DCE for the ROC project, including those identified as STR11-02900, HTG11-07439, PLM 11-01904, and ELE11-03589, and all amendments and supplements thereto.
 - **Produced**
2. All amendments and supplements to the set of plans submitted to DCE on July 29, 2011.
 - **Produced in part (Need October 2012 plans)**
3. The set of plans dated October 27, 2011, which was provided to DLZ and discussed in the DLZ report.
 - **Produced**

4. Violations issued by IFD on October 12, 2012.
 - **Not produced**
5. The list of seven requirements for continued occupation of the leased premises provided by DCE to Alex Carroll in October 2012.
 - **Produced**
6. Testing, inspection and maintenance records of the sprinkler and fire alarm systems (per NFPA 25 and 72).
 - **Produced in part (Produced February 2013 records only). Alex Carroll has produced an inspection tag from January 2012.**
7. The following documents, which are identified as "Operative Agreements" in the Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement, dated as of June 23, 2011, and recorded as instrument number A201100056539:
 - *The Note Purchase Agreement, dated as of June 23, 2011, and the amortization schedule attached thereto*
 - *The Indemnity and Guaranty Agreement*
 - *The Escrow and Servicing Agreement*
 - *The Construction Escrow Agreement*
 - *The Assignment of Contracts*
 - *The Construction Completion Guaranty*
 - *The Hazardous Material Indemnity Agreement*
 - *The 5.01% Senior Secured Note, due December 15, 2037; and*
 - *The SNDA Agreement*
 - **City does not have; Alex Carroll has produced.**
8. Fire and life safety drawing or code summary sheet, per 675 IAC 12-6-7(g)(4).
 - **Produced**
9. IFD inspection reports and checklists.
 - **Not produced**
10. Inspection reports by Bruce Baun, Robert Zickler, or any other project manager/contract manager/consultant retained by DPS.
 - **Not produced**
11. The contract or contracts with Hoffman Engineers, P.C.
 - **Not produced**

12. Any certificates of completion and/or code compliance submitted to any federal or state agency.
 - **Not produced (submissions to local agency have been produced)**
13. All other credit tenant leases entered into by DPS since January 2010.
 - **City does not have**
14. Communications between DPS and Channel 16 relating to the direction given by DPS in 2010 not to record Board of Public Safety meetings on video, and the reinstatement of video in 2012.
 - **Not produced**
15. Detailed project budgets for the project as presented to the Council committee on April 26, 2011, with total estimated project costs of \$8,643,000, and any subsequent amendments or supplements thereto.
 - **Not produced**
16. The DPS proposal prepared before Frank Straub's arrival to house the emergency operations center at the old Indianapolis airport.
 - **Not produced**
17. Documents relating to the "preferential square footage rate" for moving the IMPD East District to School # 78, as discussed at the May 16, 2011 Council meeting.
 - **Not produced**
18. The memorandum circulated by Ryan Vaughn at the May 16, 2011 Council meeting.
 - **City does not have**
19. The contract between 401-Public Safety, LLC and DPS, for the amount of \$25,064,380.80, as listed on the agenda of the April 21, 2011 Board of Public Safety meeting.
 - **City does not have**
20. The contract with the NFL that required the city to have an emergency operations center in time for the 2012 Super Bowl.
 - **Not produced**
21. The maintenance agreement referred to in paragraph 20 of the December 2013 settlement agreement.
 - **Not produced because it has yet to be signed.**
22. Exhibits A, C, D, E and F to the Development Agreement.
 - **City does not have; Alex Carroll has produced Exhibits C, D, E and F.**

23. Drafts of the Development Agreement, and related correspondence.
 - **Not produced**
24. Drafts of the Lease, and related correspondence.
 - **Not produced; Alex Carroll has produced two drafts from March 2011.**
25. Documents sufficient to show how much money was actually spent on the ROC build-out.
 - **City does not have; Alex Carroll has produced a spreadsheet.**
26. Complete DCE files for all Notices of Violation and Stop Work Orders.
 - **Produced in part**
27. Links to two SharePoint sites established by or for Valerie Washington (these links were provided by DPS to OCC but neither has produced them).
 - **Not produced**
28. Communications between Gary Coons and the NFL relating to the emergency operations center (these documents were provided by DPS to OCC but neither has produced them).
 - **Not produced**
29. Eastgate project status report issued by Robert Zickler (this was provided by DPS to OCC but neither has produced it).
 - **Not produced**
30. Copy of punch list provided by Alex Carroll (this was provided by DPS to OCC but neither has produced it).
 - **Not produced**
31. E-mails to or from Frank Straub, or on which Straub was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.
 - **Not produced**
32. E-mails to or from Jonathan Mayes, or on which Mayes was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.
 - **Not produced**
33. E-mails to or from Tom Michalak, or on which Michalak was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.
 - **Not produced**

34. Documents explaining and showing the detailed components of the \$3,627,400 in construction "hard costs" and \$3,300,000 in "land costs" identified in the materials provided to the Council committee on April 26, 2011.
 - **Not produced**
35. Documents sufficient to show the disbursement and use of the \$9,616,000 proceeds of the June 23, 2011 loan to 401-Public Safety, LLC.
 - **City does not have; Alex Carroll has produced a settlement statement.**
36. Communications between the City and Carroll and/or Carroll's affiliated entities, for the period from March 18, 2011 through June 23, 2011.
 - **Not produced**
37. Documents evidencing or relating to how DPS proposed to pay for the lease.
 - **Not produced**
38. Documents sufficient to show how much money the City has actually spent so far in connection with the ROC, including but not limited to lease payments, utility and maintenance payments, costs of improvements and repairs, machinery and equipment, furniture and fixtures, contracts (consultants, project managers, outside counsel, financial advisers, etc.), moving costs, fire watch costs, and other goods and services.
 - **Not produced**
39. Any independent appraisals of the leased premises.
 - **City does not have; Alex Carroll has produced one appraisal.**
40. Documents comparing the cost of the leased premises with the cost of other alternative locations considered by DPS for the emergency operations center or the location of the IMPD East District.
 - **Not produced**
41. Audit reports, internal or external, relating to the City's expenditures on the ROC.
 - **Not produced**
42. Notices published by the Board of Public Safety in connection with the ROC Lease, as required by IC 36-1-10-13.
 - **Not produced**

Mr. Chairman,

I move that the committee authorize Chairman Simpson to issue the document subpoena attached as Exhibit A to: Andrew P. Seiwert, Corporation Counsel, acting on behalf of all city agencies.

BY AUTHORITY OF THE
INDIANAPOLIS-MARION COUNTY
CITY-COUNTY COUNCIL

SUBPOENA TO PRODUCE DOCUMENTS,
INFORMATION OR OBJECTS TO THE
REGIONAL OPERATIONS CENTER
INVESTIGATING COMMITTEE

To: Andrew P. Seiwert, Corporation Counsel
Room 1601, City-County Building
200 E. Washington St.
Indianapolis, Indiana 46204

YOU ARE COMMANDED to produce at the time, date, and place set forth below the documents, electronically stored information, or objects identified in the attached Schedule A, and to permit inspection and copying thereof:

Place: Office of the City-County Council, Room T241 City-County Building, 200 E. Washington Street, Indianapolis, IN 46204

Date and Time: March 24, 2014 at 10:00 a.m.

The following items are attached: Schedule A; Indiana Code § 36-3-4-24; Revised Code §151-33; and Council Resolution No. 63, 2013

Witness my hand and the seal of the Indianapolis-Marion County City-County Council this ____ day of March, 2014

Joseph E. Simpson
Chairman, Regional Operations Center
Investigating Committee

Attest:

Clerk of the Council

The name, address, e-mail address and telephone number of the attorney representing the Council, who issued or requested this subpoena, are:

Fred R. Biesecker
General Counsel
200 E. Washington Street, T241
317-327-4232
Fred.Biesecker@indy.gov

SCHEDULE A

DEFINITIONS

"Document" includes electronically stored information and has the meaning set forth in Indiana Trial Rule 34(A)(1).

"ROC" means the Regional Operations Center located on the site of the former Eastgate Consumer Mall on North Shadeland Avenue

"DPS" means the City of Indianapolis Department of Public Safety.

"IMPD" means the Indianapolis Metropolitan Police Department

"IFD" means the Indianapolis Fire Department

"Development Agreement" means the Agreement between DPS, 401-Public Safety, LLC and Lifeline Construction Services, LLC, signed on March 18, 2011.

"Lease" means the Lease Agreement between DPS and 401-Public Safety, LLC dated as of May 20, 2011.

"Council" means the Indianapolis/Marion County City-County Council.

"DCE" means the Department of Code Enforcement

"OCC" means the Office of Corporation Counsel

"City" means the Consolidated City of Indianapolis and Marion County

"DLZ" means DLZ Indiana, LLC

"Carroll" means Alex Carroll and his representatives, designees and agents.

"Carroll's affiliated entities" include 401-Public Safety, LLC, Lifeline Construction Services, LLC, Lifeline Data Centers, LLC, Live Wire Technologies, LLC, Lifeline Land Ventures, LLC, Lifeline Communications, LLC, Lifeline Communications, Inc., and any other entities in which Carroll directly or indirectly holds a substantial ownership or management interest.

Unless otherwise indicated, the time period covered by the subpoena is January 1, 2010, to the present.

DOCUMENTS REQUESTED

1. All amendments and supplements to the set of plans submitted to DCE on July 29, 2011.
2. Violations issued by IFD on October 12, 2012.
3. Testing, inspection and maintenance records of the sprinkler and fire alarm systems (per NFPA 25 and 72).
4. IFD inspection reports and checklists.
5. Inspection reports by Bruce Baun, Robert Zickler, or any other project manager/contract manager/consultant retained by DPS.
6. The contract or contracts with Hoffman Engineers, P.C.
7. Any certificates of completion and/or code compliance submitted by or to any federal or state agency.
8. Communications between DPS and Channel 16 relating to the direction given by DPS in 2010 not to record Board of Public Safety meetings on video, and the reinstatement of video in 2012.

9. Detailed project budgets for the project as presented to the Council committee on April 26, 2011, with total estimated project costs of \$8,643,000, and any subsequent amendments or supplements thereto.
10. The DPS proposal prepared before Frank Straub's arrival to house the emergency operations center at the old Indianapolis airport.
11. Documents relating to the "preferential square footage rate" for moving the IMPD East District to School # 78, as discussed at the May 16, 2011 Council meeting.
12. The contract with the NFL that required the city to have an emergency operations center in time for the 2012 Super Bowl.
13. The maintenance agreement referred to in paragraph 20 of the December 2013 settlement agreement.
14. Drafts of the Development Agreement, and related correspondence.
15. Drafts of the Lease, and related correspondence.
16. Complete DCE files for all Notices of Violation and Stop Work Orders.
17. Links to two SharePoint sites established by or for Valerie Washington (these links were provided by DPS to OCC but neither has produced them).
18. Communications between Gary Coons and the NFL relating to the emergency operations center (these documents were provided by DPS to OCC but neither has produced them).
19. Eastgate project status report issued by Robert Zickler (this was provided by DPS to OCC but neither has produced it).
20. Copy of punch list provided by Alex Carroll (this was provided by DPS to OCC but neither has produced it).
21. E-mails to or from Frank Straub, or on which Straub was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.
22. E-mails to or from Jonathan Mayes, or on which Mayes was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.
23. E-mails to or from Tom Michalak, or on which Michalak was copied, relating to the ROC, for the period from April 12, 2011 through April 26, 2011.
24. Documents explaining and showing the detailed components of the \$3,627,400 in construction "hard costs" and \$3,300,000 in "land costs" identified in the materials provided to the Council committee on April 26, 2011.
25. Communications between the City and Carroll and/or Carroll's affiliated entities, for the period from March 18, 2011 through June 23, 2011.
26. Documents evidencing or relating to how DPS proposed to pay for the lease.
27. Documents sufficient to show how much money the City has actually spent so far in connection with the ROC, including but not limited to lease payments, utility and maintenance payments, costs of improvements and repairs, machinery and equipment, furniture and fixtures, contracts (consultants, project managers, outside counsel, financial advisers, etc.), moving costs, fire watch costs, and other goods and services.
28. Documents comparing the cost of the leased premises with the cost of other alternative locations considered by DPS for the emergency operations center or the location of the IMPD East District.

29. Audit reports, internal or external, relating to the City's expenditures on the ROC.
30. Notices published by the Board of Public Safety in connection with the ROC Lease, as required by IC 36-1-10-13.

IC 36-3-4-24

Departments; investigation of policies and expenditures; audit of books and records; other investigations

Sec. 24. (a) For each department of the consolidated city, the city-county legislative body shall establish a standing committee, having at least three (3) members, to investigate the policies and expenditures of the department.

(b) The legislative body or its committee may:

- (1) hire an internal auditor or an independent certified public accountant, or both, to examine the books and records of the consolidated city, any of its special service districts or special taxing districts, and the county;
- (2) investigate any charges against a department, officer, or employee of the consolidated city, or any of its special service districts or special taxing districts, or the county; and
- (3) investigate the affairs of a person with whom a city or county agency has entered or is about to enter into a contract.

(c) When conducting an investigation under this section, the legislative body or its committee:

- (1) is entitled to access to all records pertaining to the investigation; and
- (2) may compel the attendance of witnesses and the production of evidence by subpoena and attachment served and executed in the county.

(d) If a person refuses to testify or produce evidence at an investigation conducted under this section, the legislative body may order its clerk to immediately present to the circuit court of the county a written report of the facts relating to the refusal. The court shall hear all questions relating to the refusal to testify or produce evidence and shall also hear any new evidence not included in the clerk's report. If the court finds that the testimony or evidence sought should be given or produced, it shall order the person to testify or produce evidence, or both.

As added by Acts 1980, P.L.212, SEC.2. Amended by Acts 1980, P.L.213, SEC.4; P.L.14-2000, SEC.79.

Sec. 151-33. Investigating committees.

Investigating committees of a council may be formed by resolution of the council for any lawful purpose. The resolution establishing the committee shall specify the membership of the committee, the general nature of its investigation and the power to subpoena witnesses, if the power is granted.

(G.O. 68, 1988, § 6)

CITY-COUNTY COUNCIL RESOLUTION NO. 63, 2013
Proposal No. 332, 2013

PROPOSAL FOR A COUNCIL RESOLUTION establishing a special investigating committee to investigate why the Department of Public Safety entered into an allegedly unfavorable long-term lease and other agreements relating to the Regional Operations Center.

WHEREAS, on March 18, 2011, the Department of Public Safety ("DPS") entered into a Development Agreement that made significant financial commitments on behalf of the City before the lease of the Regional Operations Center ("ROC") was approved and executed; and

WHEREAS, on April 26, 2011, then-DPS Director Frank Straub made a presentation on the proposed ROC lease to the Administration and Finance Committee of the City-County Council; and

WHEREAS, on May 16, 2011, the Council adopted Proposal No. 102, 2011, which determined the need to lease approximately 76,000 square feet of space at 401 North Shadeland Avenue for use by DPS; and

WHEREAS, the Lease Agreement ("Lease"), dated as of May 20, 2011, was signed by Director Straub on behalf of DPS, but was not signed by either the Assistant Corporation Counsel or the City Controller, both of whom allegedly refused to sign it; and

WHEREAS, the Lease contains many unusual provisions that are highly unfavorable to the City; and

WHEREAS, DPS Director Troy Riggs recently ordered the evacuation of the ROC due to allegedly unsafe conditions in the building; and

WHEREAS, local media have reported that one of the owners of the property, Alex Carroll, recently said he had received an up front payment from the City as part of an alleged "confidential agreement"; and

WHEREAS, Mr. Carroll also reportedly said that a drawing presented to the Council committee is different from a drawing of the more complex facility he was told to build; and

WHEREAS, the Lease requires the City to pay more than \$18 million over a 25-year term; and

WHEREAS, the Lease and related agreements represent, at a minimum, a substantial waste of taxpayer money on a building that is allegedly unsafe; and

WHEREAS, on behalf of the citizens of Indianapolis who have expressed concerns and asked questions, an independent investigation into the matter is called for; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Pursuant to Section 151-33 of the Revised Code, an Investigating Committee is hereby formed.

SECTION 2. The committee shall be composed of ten (10) members of the Council, with five (5) members to be appointed by the President of the Council and five (5) members to be appointed by the Minority Leader. The President of the Council shall designate one (1) of the ten (10) members as the chair. The committee shall make a report to the full Council of its findings and recommendations.


SECTION 3. The general nature of the investigation to be conducted by the committee is to examine why DPS entered into an allegedly unfavorable long-term lease and other agreements relating to the ROC; to determine whether the information provided by DPS to the Council committee in April 2011 was complete and accurate; to determine whether the City has entered into other leases with similar unfavorable terms; and to investigate whether the City made other formal or informal commitments relating to the ROC lease that have not been publicly disclosed.

SECTION 4. The Committee is hereby granted the power to subpoena witnesses and documents and the Clerk of the Council is directed to employ and pay such attorneys, investigators or other staff as selected by the committee as appropriate to insure a thorough investigation.

SECTION 5. This resolution shall be in full force and effect upon adoption by the City-County Council.

The foregoing was passed by the City-County Council this 14th day of October, 2013, at 7:35 p.m.

ATTEST:


Maggie A. Lewis
President, City-County Council

NaTrina S. DeBow
NaTrina DeBow
Clerk, City-County Council

STATE OF INDIANA, MARION COUNTY)
) SS:
CITY OF INDIANAPOLIS)

I, NaTrina DeBow, Clerk of the City-County Council, Indianapolis, Marion County, Indiana, do hereby certify the above and foregoing is a full, true, and complete copy of Proposal No. 332, 2013, a Proposal for a COUNCIL RESOLUTION, passed by the City-County Council on the 14th day of October, 2013, by a vote of 28 YEAS and 0 NAYS, and was retitled Council Resolution No. 63, 2013, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this 17th day of October, 2013.

NaTrina DeBow
Clerk, City-County Council

(SEAL)